U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 35160496

Date: DEC. 9, 2024

Appeal of Nebraska Service Center Decision

Form I-140, Immigrant Petition for Alien Workers (Extraordinary Ability)

The Petitioner, a software developer, seeks classification as an individual of extraordinary ability. *See* Immigration and Nationality Act (the Act) section 203(b)(1)(A), 8 U.S.C. § 1153(b)(1)(A). This first preference classification makes immigrant visas available to those who can demonstrate their extraordinary ability through sustained national or international acclaim and whose achievements have been recognized in their field through extensive documentation.

The Director of the Nebraska Service Center denied the petition, concluding that although the record established that the Petitioner satisfied the initial evidentiary requirements, it did not establish, as required, that the Petitioner has sustained national or international acclaim and is an individual in the small percentage at the very top of the field. The matter is now before us on appeal under 8 C.F.R. § 103.3.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). We review the questions in this matter de novo. *Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon de novo review, we will sustain the appeal.

I. LAW

Section 203(b)(1)(A) of the Act makes immigrant visas available to individuals with extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation. These individuals must seek to enter the United States to continue work in the area of extraordinary ability, and their entry into the United States will substantially benefit the United States. The term "extraordinary ability" refers only to those individuals in "that small percentage who have risen to the very top of the field of endeavor." 8 C.F.R. § 204.5(h)(2). The implementing regulation at 8 C.F.R. § 204.5(h)(3) sets forth a multi-part analysis. First, a petitioner can demonstrate international recognition of their achievements in the field through a one-time achievement in the form of a major, internationally recognized award. Or the petitioner can submit evidence that meets at least three of the ten criteria listed at 8 C.F.R. § 204.5(h)(3)(i)–(x), including items such as awards, published material in certain media, and scholarly articles. If those standards

do not readily apply to the individual's occupation, then the regulation at 8 C.F.R. § 204.5(h)(4) allows the submission of comparable evidence.

Once a petitioner has met the initial evidence requirements, the next step is a final merits determination, in which we assess whether the record shows sustained national or international acclaim and demonstrates that the individual is among the small percentage at the very top of the field of endeavor. *See Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010) (discussing a two-part review where the documentation is first counted and then, if fulfilling the required number of criteria, considered in the context of a final merits determination); *see also Visinscaia v. Beers*, 4 F. Supp. 3d 126, 131-32 (D.D.C. 2013); *Rijal v. USCIS*, 772 F. Supp. 2d 1339 (W.D. Wash. 2011).

II. ANALYSIS

The Petitioner has worked in the specialty of 3D digital scanning since 1998. He worked for several companies in South Korea, most recently as the chief technical officer (CTO) of [redacted] a company that manufactures dental scanning equipment. The Petitioner last entered the United States in June 2023 as an E-2 nonimmigrant treaty investor, working for [redacted] U.S. subsidiary. He currently holds L-1A nonimmigrant status, working as [redacted] USA's CTO.

The Petitioner did not claim to have received a major, internationally recognized award. He claims to have satisfied five of the regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)–(x), summarized below:

- (i), Lesser nationally or internationally recognized prizes or awards;
- (iii), Published material about the individual in professional or major media;
- (v), Original contributions of major significance;
- (viii), Leading or critical role for distinguished organizations or establishments; and
- (ix), High remuneration for services.

In denying the petition, the Director acknowledged that the Petitioner had submitted sufficient evidence to satisfy the criteria pertaining to awards, published material, and leading or critical roles. But the Director concluded in a final merits determination that this evidence does not demonstrate that the Petitioner has reached the top of his field and achieved sustained national or international acclaim. The Director acknowledged the Petitioner's receipt of nationally recognized awards, the publication of articles about the Petitioner, but the Director concluded that the related evidence does not show that the Petitioner has reached the top of his field.

On appeal, the Petitioner maintains that he met the two additional claimed criteria that the Director did not grant, relating to contributions and remuneration, and that the evidence in the record is sufficient to show that the Petitioner has earned sustained national or international acclaim at the top of his field.

We will not focus on individual regulatory criteria, because the Director concluded that the Petitioner had satisfied three of them. We will consider whether the record as a whole establishes the Petitioner's sustained national or international acclaim and that he is one of the small percentage at the very top of the field of endeavor, and that his achievements have been recognized in the field through extensive documentation.

In a final merits determination, we analyze a petitioner's accomplishments and weigh the totality of the evidence to determine if their successes are sufficient to demonstrate that they have extraordinary ability in the field of endeavor. *See* section 203(b)(1)(A)(i) of the Act; 8 C.F.R. § 204.5(h)(2), (3); *see also Kazarian*, 596 F.3d at 1119-20.[1] In this matter, we determine that the Petitioner has established eligibility.

The Petitioner won awards for his work in 3D modeling software before he began working for [redacted] in 2017. He is named on numerous patents and patent applications filed in various countries since 2006, some of them specific to digital dentistry, others relating to other aspects of 3D modeling.

Responding to a request for evidence, the Petitioner cited relevant passages in the *USCIS Policy Manual*: "[E]vidence that the person developed a patented technology that has attracted significant attention or commercialization may establish the significance of the person's original contribution to the field." 6 *USCIS Policy Manual* F.2(B)(1), https://www.uscis.gov/policy-manual. The same document also indicates that "employment . . . with leading institutions in the field . . . can be a positive factor toward demonstrating that the person is among the small percentage at the top of the field." *Id.* at F.2(B)(2).

The cited passages are relevant because the record indicates that [redacted] are popular, widely used, and highly regarded in the field of dentistry, and that the Petitioner led the development of those devices. An article in *Hankyung Job & Joy*, an offshoot publication of *Korea Economic Daily*, indicated that the [redacted] "quickly became a game changer in the global digital dentistry market," and that [redacted] "is currently recognized as the second largest [redacted] company in the world." The [redacted] won a Best of Class Technology Award from [redacted] in 2021.

The Director concluded that "[t]he petitioner did not provide independent and objective evidence to demonstrate that the invention(s) and technology is being widely utilized widely by others in the petitioner's field—reaching far beyond the petitioner's employer(s)."

The technology in question is patented, which grants the patent holder exclusive rights to the technology. We would not expect rival companies to use the same technology unless the patent holder licensed it for that purpose. A patent holder has the discretion to keep its patented technology to itself in order to gain market advantage, which appears to be the case here.

Materials in the record indicate that [redacted] holds more than a 20% share of the global [redacted] market. This information indicates significant commercialization of the Petitioner's work – not through its adoption by competitors, but through sales amounting to a substantial proportion of the market for such products. The record shows that when [redacted] was sold for about $2 billion in 2022, a media report about the acquisition called [redacted] "the world's No. 1 [redacted]

[1] *See generally* 6 *USCIS Policy Manual*, *supra*, at F.2(B)(2) (stating that USCIS officers should then evaluate the evidence together when considering the petition in its entirety to determine if the petitioner has established, by a preponderance of the evidence, the required high level of expertise for the immigrant classification).

Some of the published materials in the record appear to be self-promotional, such as an article about [redacted] products that appeared in *Dentistry*, a publication that describes its purpose as "[c]onnecting dental brands with the UK dental profession." But other materials represent objective trade media coverage, indicating that the Petitioner has been recognized as being largely responsible for the creation of highly successful products.

Third-party coverage and discussion of [redacted] products heavily features the Petitioner, both identifying him by name and discussing his role as [redacted] CTO and as a key developer of the company's products. Crucially, this coverage extends beyond [redacted] own press releases and "sponsored" articles. Objective media coverage features the Petitioner as, in effect, the "face" of popular and highly-regarded products in the field of digital dentistry.

The record as a whole supports the conclusion that the Petitioner has met his burden of proof by a preponderance of the evidence.

III. CONCLUSION

The Petitioner has submitted sufficient evidence to establish eligibility as an individual of extraordinary ability. We will therefore sustain the appeal.

ORDER: The appeal is sustained.